

1 **State of Arkansas**  
2 **79th General Assembly**  
3 **Regular Session, 1993**  
4 **By: Representative Dietz**

# **A Bill**

**ACT 690 OF 1993**  
**HOUSE BILL 1425**

## **For An Act To Be Entitled**

"ARKANSAS REAL ESTATE LICENSE LAW"

### **Subtitle**

"ARKANSAS REAL ESTATE LICENSE LAW"

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. The legislature finds that it is necessary to regulate the practice of real estate brokers and salespersons in order to protect the public health, safety and welfare. It is the legislature's intent that only individuals who meet and maintain minimum standards of competence and conduct may provide service to the public.

SECTION 2. No person shall practice or represent himself or herself as a real estate broker or salesperson without first applying for and receiving a license to practice under this act. Any person who directly or indirectly for another with the intention, or on the promise, of receiving any valuable consideration, offers, attempts, or agrees to perform any single act described in Section 3, Subsection (12) of this act, whether as part of a transaction or as an entire transaction, shall be deemed a broker or salesperson within the meaning of this act. The commission of a single act by a person required to be licensed under this act and not so licensed shall constitute a violation of this act. It shall be unlawful for any person, directly or indirectly, to act as a real estate broker or salesperson without first obtaining a license and otherwise complying with the provisions of this act.

SECTION 3. As used in this act, unless the context otherwise requires:

(1) "Associate Broker" shall mean an individual who has a broker's license and who is employed by a principal broker, or is associated with a

1 principal broker as an independent contractor and who participates in any  
2 activity described in Subsection (12) of this Section while under the  
3 supervision of a principal broker or executive broker; provided, however, that  
4 an associate broker shall have no supervisory authority over any other  
5 licensee.

6 (2) "Branch Office" shall mean a real estate principal broker's office  
7 other than his or her principal place of business.

8 (3) "Board" shall mean State Board of Private Career Education.

9 (4) "Classroom Hour" shall mean a period of at least fifty (50)  
10 minutes, but not more than sixty (60) minutes, of actual classroom instruction  
11 with the instructor present;

12 (5) "Commission" shall mean the Arkansas Real Estate Commission.

13 (6) "Continuing Education" shall mean post licensure education derived  
14 from participation in courses in real estate-related subjects, which have been  
15 approved by the Board or which are not required to be approved by the Board;

16 (7) "Continuing Education Unit" or "CEU" shall mean a period of ten (10)  
17 contact hours of actual classroom instruction with the instructor present;

18 (8) "Director" shall mean the Executive Director of the Arkansas Real  
19 Estate Commission.

20 (9) "Executive Broker" shall mean an individual who has a broker's  
21 license and who is employed by a principal broker or associated with a  
22 principal broker as an independent contractor and who participates in any  
23 activity described in Subsection (12) of this Section while under the  
24 supervision of a principal broker; provided, however, that an executive broker  
25 may supervise associate brokers and salespersons.

26 (10) "Licensee" shall mean an individual who holds any type of license  
27 issued by the Commission, and unless the context clearly requires otherwise,  
28 shall include principal broker, executive broker, associate broker and  
29 salesperson. Nothing in this act shall preclude a licensee from doing  
30 business as a professional corporation pursuant to Ark. Code Ann., Sec.  
31 4-29-101 et seq.

32 (11) "Participate in a real estate auction" shall mean any act or  
33 conduct done for compensation or the expectation thereof and designed,  
34 intended or expected to affect the bidding or results of a real estate  
35 auction, including, without limitation, serving as an auctioneer or ringman,

1 or encouraging, soliciting or receiving bids.

2           (12) Principal Broker shall mean an individual while acting for another  
3 for a fee, commission, or other consideration, or the expectation thereof,  
4 who:

5                   (a) Sells, exchanges, purchases, rents, or leases real estate.

6                   (b) Offers to sell, exchange, purchase, rent or lease real  
7 estate.

8                   (c) Negotiates, offers, attempts or agrees to negotiate the sale,  
9 exchange, purchase, rental or leasing of real estate.

10                  (d) Lists, offers, attempts or agrees to list real estate for  
11 sale, lease, or exchange.

12                  (e) Auctions, offers, attempts or agrees to auction real estate,  
13 or participates in a real estate auction.

14                  (f) Buys, sells, offers to buy or sell or otherwise deals in  
15 options on real estate or improvements thereon.

16                  (g) Collects, offers, attempts or agrees to collect rent for the  
17 use of real estate.

18                  (h) Advertises or holds himself out as being engaged in the  
19 business of buying, selling, exchanging, renting or leasing real estate.

20                  (i) Assists or directs in the procuring of prospects, calculated  
21 to result in the sale, exchange, lease or rental of real estate.

22                  (j) Assists or directs in the negotiation of any transaction  
23 calculated or intended to result in the sale, exchange, leasing or rental of  
24 real estate.

25                  (k) Engages in the business of charging an advance fee in  
26 connection with any contract whereby he or she undertakes to promote the sale  
27 or lease of real estate either through its listing in a publication issued for  
28 such purpose or for referral of information concerning such real estate to  
29 brokers or both.

30                  (l) Performs any of the foregoing acts as an employee of, or on  
31 behalf of, the owner of, or any person who has an interest in, real estate.

32           (13) "Real Estate" shall mean and include leaseholds or any other  
33 interest or estate in land and shall include the sale and resale of time-share  
34 units. Unless the context otherwise requires, the word "real estate" and "real  
35 property" shall be synonymous.

1           (14) "Salesperson" shall mean an individual who has a salesperson's  
2 license and who is employed by a principal broker or is associated with a  
3 principal broker as an independent contractor and who participates in any  
4 activity described in Subsection 12 of this Section while under the  
5 supervision of a principal broker or executive broker.

6

7           SECTION 4. The provisions of this act shall not apply to:

8           (1) Any person not licensed under this act who performs any of the acts  
9 described in Section 3, Subsection (12) of this act with regard to the  
10 property owned, leased, or purchased by him or her.

11           (2) An attorney in fact under a duly executed and recorded power of  
12 attorney from the owner or lessor authorizing the final consummation by  
13 performance of any contract for the sale, lease or exchange of real estate,  
14 provided that the attorney in fact receives no fee, commission, or other  
15 consideration, and has no expectation thereof, directly or indirectly, for  
16 performing any such act.

17           (3) An attorney at law in the performance of his or her duties as an  
18 attorney at law.

19           (4) Any person acting as receiver, trustee in bankruptcy,  
20 administrator, executor, or guardian, or while acting under a court order or  
21 under the authority of a will or of a trust instrument.

22           (5) Any person acting as the resident manager when such resident  
23 manager resides on the premises and is engaged in the leasing of real property  
24 in connection with his or her employment.

25           (6) Any officer or employee of a federal agency, the state government  
26 or any political subdivision thereof in the performance or conduct of his or  
27 her official duties.

28           (7) Any multiple listing service wholly owned by a nonprofit  
29 organization or association of real estate licensees.

30           (8) Any real estate broker licensed by the Arkansas Real Estate  
31 Commission on or before January 1, 1985, who is engaged in the sale of real  
32 estate by auction only is authorized to employ real estate salespersons to  
33 work under the license of the broker even though the broker is employed in a  
34 non-real estate-related field and is only a part-time broker.

35           (9) An officer of a corporation or a general partner of a partnership

1 with respect to real property owned or leased by the corporation or  
2 partnership, or in connection with the proposed purchase or leasing of real  
3 property by the corporation or partnership, provided that such acts are not  
4 performed by the officer or partner for or in expectation of special  
5 compensation and provided further that such acts are not performed as a  
6 vocation of the officer or partner.

7

8 SECTION 5.

9 (1) Creation - Members

10 (a) The Arkansas Real Estate Commission as previously created and  
11 established shall continue in existence.

12 (b) The Commission shall consist of five (5) members appointed by  
13 the Governor for a term of three years, whose terms shall begin on January 1  
14 and end on December 31 of the third year, or when their respective successors  
15 are appointed and qualified.

16 (i) Three (3) members shall have been licensed real estate  
17 brokers or licensed real estate salespersons for not less than five (5) years  
18 prior to the nomination. The Governor shall appoint members to fill vacancies  
19 from a list of four (4) nominees submitted by the Arkansas Realtors  
20 Association.

21 (ii) Two (2) members shall not be actively engaged in or  
22 retired from the business of real estate. One shall represent consumers, and  
23 one shall be sixty (60) years of age or older, and shall represent the  
24 elderly. Both shall be appointed from the state at large, subject to  
25 confirmation by the Senate, but shall not be required to be appointed from a  
26 list submitted by the Arkansas Realtors Association. The two (2) positions  
27 may not be held by the same person. Both shall be full voting members but  
28 shall not participate in the grading of examinations.

29 (c) Each commissioner shall receive as full compensation for his  
30 services the sum of fifty dollars (\$50.00) per day for each day actually spent  
31 on the work of the Commission and his actual and necessary traveling expenses  
32 incurred in the performance of the duties pertaining to his office.

33 (d) The persons previously appointed and now serving as  
34 Commissioners under existing law shall continue to serve the remainder of  
35 their respective terms, except that their terms are hereby extended to

1 December 31 of the same calendar year in which they are presently scheduled to  
2 expire.

3 (2) Organization - Employees

4 (a) Immediately upon the qualification of the member appointed in  
5 each year, the Commission shall meet and organize by selecting from its  
6 members a chairman and vice chairman. A simple majority shall constitute a  
7 quorum. The Commission shall meet as often as necessary or desirable in order  
8 to conduct its business.

9 (b) The Commission shall employ an Executive Director and such  
10 staff as may be necessary to carry out the provisions of this act and to put  
11 into effect the rules and regulations the Commission may promulgate. The  
12 Commission shall fix the salaries of employees.

13 (3) Powers and duties.

14 (a) The Commission may do all things necessary and convenient for  
15 carrying into effect the provisions of this act and may from time to time  
16 promulgate necessary or desirable rules and regulations.

17 (b) The Commission shall have power to administer oaths.

18 (c) The Commission shall adopt a seal with such design as it may  
19 prescribe engraved thereon.

20 (d) Copies of all records and papers in the office of the  
21 Commission, certified and authenticated by the Commission, shall be received  
22 in evidence in all courts equally and with like effect as the original.

23 (e) The Commission shall annually publish a list of the names and  
24 addresses of all active licensees licensed by it under the provisions of this  
25 act, and of all persons whose licenses have been suspended or revoked during  
26 that period, together with other information relative to the enforcement of  
27 the provisions of this act, as it may deem of interest to the public.

28 (f) The Commission may conduct or assist in conducting real  
29 estate institutes and seminars and incur and pay the reasonable and necessary  
30 expenses in connection therewith, which institutes or seminars shall be open  
31 to all licensees.

32 (g) The Commission is authorized to make reasonable charges for  
33 materials provided by the Commission and for services performed in connection  
34 with providing materials.

35 (4) Disposition of funds.

1           (a) Except as otherwise provided herein, all fees, charges, fines  
2 and penalties collected by the Commission shall be deposited in a fund to be  
3 known as the Arkansas Real Estate Commission Fund.

4           (b) The Commission is empowered to expend funds appropriated from  
5 the Arkansas Real Estate Commission Fund for the requirements, purposes, and  
6 expenses of the Commission under the provisions of this act, upon voucher  
7 signed by the Executive Director or Deputy Executive Director of the  
8 Commission and countersigned by the Chairman or Vice Chairman thereof.

9           (5) Subpoenas and subpoenas duces tecum.

10           (a) The Arkansas Real Estate Commission shall have the power to  
11 issue subpoenas and subpoenas duces tecum in connection with both its  
12 investigations and hearings.

13           (b) A subpoena duces tecum may require any book, writing,  
14 document, or other paper or thing which is germane to an investigation or  
15 hearing conducted by the Commission, to be transmitted to the Commission.

16           (c) Service of a subpoena shall be as provided by law for the  
17 service of subpoenas in civil cases in the circuit courts of this state, and  
18 the fees and mileage of officers serving the subpoenas and of witnesses  
19 appearing in answer to the subpoenas shall be the same as provided by law for  
20 proceedings in civil cases in the circuit courts of this state.

21           (d) In the event a person shall have been served with a subpoena  
22 or subpoena duces tecum as herein provided and fails to comply therewith, the  
23 Commission may apply to the circuit court of the county in which the  
24 Commission is conducting its investigation or hearing for an order causing the  
25 arrest of the person and directing that the person be brought before the  
26 court. The court shall have the power to punish the disobedient person for  
27 contempt as provided by law in the trial of civil cases in the circuit courts  
28 of this state.

29           (e) The Commission shall issue a subpoena or subpoena duces tecum  
30 upon the request of any party to a hearing before the Commission. The fees  
31 and mileage of the officers serving the subpoena and of the witness shall be  
32 paid by the party at whose request a witness is subpoenaed.

33

34           SECTION 6.

35           The Executive Director shall have such duties, authority, and

1 responsibility as the Commission may designate, or as necessarily implied  
2 herein.

3

4 SECTION 7.

5 The Commission shall have authority to establish, charge and collect the  
6 following fees:

- 7 1) An application fee not to exceed \$50.00;
- 8 2) Original broker license fee not to exceed \$60.00;
- 9 3) Annual renewal broker license fee not to exceed \$60.00;
- 10 4) Original salesperson license fee not to exceed \$40.00;
- 11 5) Annual renewal salesperson license fee not to exceed \$40.00;
- 12 6) Broker expired license fee not to exceed \$90.00 per year or fraction  
13 thereof;
- 14 7) Salesperson expired license fee not to exceed \$60.00 per year or  
15 fraction thereof;
- 16 8) License reissuance fee not to exceed \$30.00;
- 17 9) Initial duplicate license fee not to exceed \$30.00;
- 18 10) Annual renewal duplicate license fee not to exceed \$30.00;
- 19 11) Transfer fee not to exceed \$30.00;
- 20 12) An examination fee not to exceed \$75.00; provided, however, the  
21 Commission, at its discretion, may direct each applicant to pay the actual  
22 costs of the examination fee directly to a testing service engaged by the  
23 Commission to administer the examination;
- 24 13) Appeal (pursuant to Section 19) filing fee not to exceed \$100.00;
- 25 14) Recovery Fund fee not to exceed \$25.00.

26

27 SECTION 8.

28 No action or suit shall be instituted, nor recovery be had, in any court  
29 of this state by any person for compensation for performance of any acts  
30 described in Section 3, Subsection (12) of this act unless such person was  
31 duly licensed under this act as a principal broker at the time of offering to  
32 perform any such act or procuring any promise to contract for the payment of  
33 compensation for any such contemplated act. No salesperson, executive broker  
34 or associate broker may sue in his or her own capacity for the recovery of a  
35 fee, commission, or compensation for services as a salesperson, executive

1 broker or associate broker unless the action is against the principal broker  
2 with whom he or she is licensed or was licensed at the time the act was  
3 performed.

4

5 SECTION 9.

6 (a) The Commission shall issue a license to any applicant who meets the  
7 following requirements:

8 (1) Attainment of the age of majority;

9 (2) Successful completion of educational requirements prescribed  
10 by this act;

11 (3) Successful completion of experience requirements prescribed  
12 by this act;

13 (4) Successful completion of an examination administered or  
14 approved by the Commission;

15 (5) Demonstrates no record of unprofessional conduct;

16 (6) Evidence of good reputation for honesty, trustworthiness, and  
17 integrity sufficient to safeguard the interests of the public;

18 (b) The Commission shall determine what constitutes adequate proof of  
19 meeting the above requirements, and shall deny a license to any applicant who  
20 fails to meet such requirements, or who fails to pay the appropriate fees.

21

22 SECTION 10.

23 (1) The Commission shall establish educational requirements for  
24 licensure, including the standards and procedures for approval of educational  
25 programs, subject to the following conditions:

26 (a) The maximum number of educational hours to be required of an  
27 applicant for a broker's license shall not exceed one hundred and twenty (120)  
28 hours within the thirty-six (36) months immediately preceding the date of  
29 application.

30 (b) The maximum number of hours required of an applicant for a  
31 salesperson's license shall not exceed ninety (90) hours, at least thirty (30)  
32 hours of which shall be in the basic principles of real estate.

33 (2) The Commission shall establish the experience requirement for  
34 licensure for an applicant for a broker's license subject to the following  
35 conditions:

1           (a) Serve an active, bona fide apprenticeship by holding a valid  
2 real estate salesperson's license issued by the Arkansas Real Estate  
3 Commission, or by holding a valid real estate salesperson's license or  
4 broker's license issued by the appropriate licensing agency of another state,  
5 for a period of not less than twenty-four (24) months within the previous  
6 forty-eight (48) month period immediately preceding the date of application.

7

8           SECTION 11.

9           (a) In order to be licensed in Arkansas nonresidents must:

10           (1) Either (A) meet the requirements of Section 10 of this act,  
11 or (B) show satisfactory proof of current active licensure in the applicant's  
12 resident jurisdiction, which must be a jurisdiction that offers Arkansas  
13 licensees opportunities for licensure substantially comparable to those  
14 offered to that jurisdiction's licensees by this act;

15           (2) Pay any required fees;

16           (3) Sign a statement that the applicant has read the Arkansas  
17 real estate license law and regulations and agrees to abide by their  
18 provisions in all real estate activity.

19           (4) Affiliate with a resident or nonresident principal broker  
20 licensed by the Commission if a salesperson or associate broker. If a  
21 nonresident licensee terminates the affiliation with a principal broker  
22 licensed by the Commission, the license of such nonresident shall  
23 automatically be terminated until such nonresident places the license on  
24 inactive status or affiliates with another broker licensed by the Commission.

25           (5) Cause the licensing body of the applicant's resident  
26 jurisdiction to furnish to the Commission a certification of licensure and  
27 copies of the records of any disciplinary actions taken against the  
28 applicant's license in that or other jurisdictions. Disciplinary action by  
29 any other lawful licensing authority may be grounds for denial of license to a  
30 nonresident or for suspension or revocation of a license issued to a  
31 nonresident; or for other appropriate disciplinary action authorized by this  
32 act;

33           (6) File with the Executive Director a designation in writing  
34 that appoints the Executive Director to act as the licensee's agent, upon whom  
35 all judicial and other process or legal notices directed to such licensee may

1 be served. Service upon the Executive Director shall be equivalent to  
2 personal service upon the licensee. Copies of such appointment, certified by  
3 the Executive Director, shall be deemed sufficient evidence thereof and shall  
4 be admitted in evidence with the same force and effect as the original thereof  
5 might be admitted. In such written designation, the licensee shall agree that  
6 any lawful process against the licensee which is served upon the Executive  
7 Director shall be of the same legal force and validity as if served upon the  
8 licensee and that the authority shall continue in force so long as any  
9 liability remains outstanding in this jurisdiction. The Executive Director  
10 shall mail a copy of any such process or notice by certified mail to the last  
11 known business address of the licensee;

12           (7) Agree in writing to cooperate with any investigation  
13 initiated by the Commission by promptly supplying any documents the Commission  
14 may request and by personally appearing at the Commission's offices or other  
15 location in this state as the Commission may request. If notice is sent by  
16 certified mail to the last known business address of a nonresident licensee  
17 directing the licensee to produce documents or to appear for an interview and  
18 the licensee fails to comply with that request, the Commission may impose on  
19 the nonresident licensee any disciplinary sanction permitted by this act.

20           (b) The Commission in its discretion may enter into written agreements  
21 with similar licensing authorities of other jurisdictions as may be  
22 necessitated by the laws of those jurisdictions to assure for Arkansas  
23 licensees nonresident licensure opportunities comparable to those afforded to  
24 nonresidents by this act.

25           (c) The Commission may deny licensure under Subsection (a)(1)(B) hereof  
26 to an applicant whose resident licensure is in a jurisdiction which the  
27 Commission deems does not have educational or experience requirements at least  
28 equal to those of Arkansas.

29

30           SECTION 12.

31           (1) Applications for licensure must be submitted on forms provided by  
32 the Commission. The Commission may require any information and documentation  
33 needed to determine if the applicant meets the criteria for licensure as  
34 provided in this act. Each applicant shall pay such application fee and  
35 examination fee as the Commission may require pursuant to Section 7 of this

1 act.

2 (2) An applicant who successfully completes the examination shall,  
3 within 90 days from the date of the examination, pay such license fee and  
4 Recovery Fund fee as the Commission may require pursuant to Section 7 of this  
5 act. The applicant's failure to pay the license fee and Recovery Fund fee  
6 within that ninety (90) day period shall invalidate the examination results  
7 and the applicant shall be required to make new application and retake the  
8 examination as an original applicant.

9

10 SECTION 13.

11 (1) Every license, both active and inactive, shall expire on December  
12 31 of each year.

13 (2) (a) For each active licensee, the Commission shall issue a new  
14 license for each ensuing year, in the absence of any reason or condition which  
15 might warrant the refusal of a license, upon receipt of a written request no  
16 later than September 30 of each year upon forms provided by the Commission  
17 together with the annual fee therefor.

18 (b) (i) For any broker or salesperson who does not wish to engage  
19 in the real estate business, the license shall be renewed on inactive status  
20 in the absence of any reason or condition which might warrant the refusal of a  
21 license, upon receipt of the written request of the applicant no later than  
22 September 30 of each year upon forms provided by the Commission together with  
23 the annual fee therefor.

24 (ii) However, the Commission may limit the number of  
25 renewal periods which a license may be renewed on inactive status.

26 (iii) The renewal fee for inactive status shall be the same  
27 as for renewal of an active license.

28 (3) (a) If any person to whom a valid license may have been issued  
29 permits the license to expire for a period not in excess of that established  
30 by the Commission, the Commission shall issue to the person a current license  
31 without requiring the person to submit to any examination if the person  
32 furnishes such information as the Commission requires, including proof of  
33 completion of appropriate continuing education requirements, and pays such fee  
34 as the Commission requires.

35 (b) An application for renewal filed after September 30 of any

1 year shall be treated as an application to renew an expired license.

2

3 SECTION 14.

4 (1) A licensee may place his or her license on inactive status. The  
5 holder of an inactive license shall not practice as a real estate broker or  
6 salesperson in this state without first activating the license.

7 (2) An inactive license which is not renewed shall be treated as an  
8 expired license pursuant to Section 14 of this act.

9 (3) Inactive licenses may be activated upon compliance with  
10 requirements established by the Commission, including payment of appropriate  
11 fees.

12 (4) The provisions relating to disciplinary action against a licensee  
13 shall be applicable to an inactive or expired license.

14

15 SECTION 15.

16 (1) (a) Every principal broker shall maintain a place of business and  
17 shall display a permanently attached sign bearing the name under which the  
18 broker conducts his or her real estate business and the words \_real estate\_,  
19 \_realty\_, or other words approved by the Commission which clearly indicate to  
20 the public that the broker is engaged in the real estate business.

21 (b) If a principal broker maintains a branch office, a duplicate  
22 license shall be issued upon payment by the principal broker of such initial  
23 fee, and, thereafter, renewal fee as the Commission may require pursuant to  
24 Section 7 of this act. Provided, however, a duplicate license shall not be  
25 issued for a branch office at which an executive broker or associate brokers  
26 or salespersons are assigned unless such branch office has its own principal  
27 broker.

28 (2) When a licensee changes his or her (i) name, (ii) place of  
29 business, or (iii) address shown on the license, or loses a license or pocket  
30 card, he or she shall promptly notify the Commission of such change or loss.  
31 Upon receipt of such notice and payment of the relevant fee, the Commission  
32 shall reissue the license.

33 (3) It is the responsibility of each licensee to keep the Commission  
34 notified of his or her mailing address, both home and business, at all times.

35 (4) (a) The licenses of the principal broker and all licensees

1 employed by or associated with him or her shall be retained by the  
2 principal broker and conspicuously displayed in his or her place of  
3 business.

4 (b) Upon the termination of a licensee's employment by or  
5 association with a principal broker, the licensee shall promptly deliver his  
6 or her pocket card to the principal broker, and the principal broker shall  
7 promptly notify the Commission of such termination and return to the  
8 Commission the license and pocket card of the terminated licensee, which  
9 shall automatically inactivate the license. If the pocket card is  
10 unavailable, the principal broker shall promptly so notify the Commission in  
11 writing.

12 (c) A license inactivated under this section may be transferred  
13 to another principal broker upon application of the licensee, payment of the  
14 relevant fee, and submission of a statement that he or she is not taking any  
15 listings, management contracts, appraisals, lease agreements, or copies of  
16 any such documents, or any other pertinent information belonging to the  
17 licensee's previous principal broker.

18

19 SECTION 16.

20 In every real estate transaction involving a licensee, the licensee  
21 shall clearly disclose to all parties or their agents which party he or she is  
22 representing. The timing, method and other requirements of such disclosure  
23 shall be established by the Commission, and the Commission shall also  
24 determine the consequences of failure to make disclosure in accordance with  
25 such requirements.

26

27 SECTION 17.

28 (a) The Commission may, on its own motion, and shall, upon the verified  
29 complaint in writing of any person, provided the complaint and any evidence,  
30 documentary or otherwise, presented in connection therewith shall make out a  
31 prima facie case, investigate the actions of any person engaged in the  
32 business or acting in the capacity of a real estate broker or real estate  
33 salesperson regardless of whether the transaction was for his or her own  
34 account or in his or her capacity as broker or salesperson. *If the complaint*  
35 *fails to state a prima facie case or if after investigation the Executive*

1 Director determines there is insufficient proof of a violation of this act,  
2 the Executive Director shall dismiss the complaint. If, however, the  
3 Executive Director determines there is sufficient proof of a violation of this  
4 act, the licensee shall be notified of the charges against him or her and  
5 ordered to appear for a hearing. If the licensee is found to have violated  
6 this act, the Commission may impose any one or more of the following  
7 sanctions:

- 8 (1) Suspension, revocation, or denial of a license or the renewal  
9 thereof;
- 10 (2) A penalty not to exceed \$1,000.00 for each violation;
- 11 (3) Completion of appropriate educational programs or courses;
- 12 (4) Successful completion of an appropriate licensing  
13 examination;
- 14 (5) Conditions or restrictions upon the licensee's license or  
15 practice; or
- 16 (6) Such other requirements or penalties as may be appropriate to  
17 the circumstances of the case, and which would achieve the desired  
18 disciplinary purposes, but which would not impair the public welfare and  
19 morals.

20 (b) The Commission is authorized to file suit in either the Circuit  
21 Court of Pulaski County or the circuit court of any county in which the  
22 defendant resides or does business to collect any penalty assessed pursuant to  
23 this act if such penalty is not paid within the time prescribed by the  
24 Commission.

25 (c) Where deemed appropriate the Commission may suspend the imposition  
26 of any sanctions imposed upon appropriate terms and conditions.

27 (d) The following acts, conduct or practices are prohibited and any  
28 licensee found guilty shall be subject to disciplinary action as provided  
29 above:

- 30 (1) Obtaining a license by means of fraud, misrepresentation or  
31 concealment;
- 32 (2) Violating any of the provisions of this act or any rules or  
33 regulations adopted pursuant thereto or any order issued thereunder;
- 34 (3) Being convicted of any crime involving moral turpitude, fraud,  
35 dishonesty, untruthfulness, or untrustworthiness; provided, that for the

1 purposes of this section being convicted shall include all instances in which  
2 a plea of guilty or nolo contendere is the basis for the conviction, and all  
3 proceedings in which the sentence has been deferred or suspended, and a  
4 certified copy of the final judgment of any court of competent jurisdiction  
5 in such matter shall be conclusive evidence in any hearing under this act;

6 (4) Making any substantial misrepresentation.

7 (5) Making, printing, publishing, distributing, or causing,  
8 authorizing, or knowingly permitting the making, printing, publication or  
9 distribution of false statements, descriptions or promises of such character  
10 as to reasonably induce, persuade, or influence any person to act thereon;

11 (6) Failing, within a reasonable time, to account for or to remit  
12 any monies coming to his possession which belong to others;

13 (7) Committing any act involving moral turpitude, fraud,  
14 dishonesty, untruthfulness or untrustworthiness;

15 (8) Acting for more than one party in a transaction without the  
16 knowledge of all parties for whom he or she acts; or accepting a commission or  
17 valuable consideration for the performance of any of the acts specified in  
18 this act from any person except the licensed principal broker under whom he or  
19 she is licensed.

20 (9) Acting as a broker or salesperson while not licensed with a  
21 principal broker, representing or attempting to represent a broker other than  
22 the principal broker with whom he or she is affiliated without the express  
23 knowledge and consent of such principal broker, or representing himself or  
24 herself as a salesperson or having a contractual relationship similar to that  
25 of a salesperson with anyone other than a licensed principal broker.

26 (10) Advertising in a false, misleading, or deceptive manner;

27 (11) Being unworthy or incompetent to act as a real estate broker  
28 or salesperson in such manner as to safeguard the interests of the public;

29 (12) Paying a commission or valuable consideration to any person  
30 for acts or services performed in violation of this act, including paying a  
31 commission or other valuable consideration to an unlicensed person for  
32 participation in a real estate auction;

33 (13) Any other conduct whether of the same or a different  
34 character from that hereinbefore specified which constitutes improper,  
35 fraudulent, or dishonest dealing.

1 (e) Any license obtained through mistake or inadvertence shall be  
2 subject to revocation.

3 (f) A licensee whose license is revoked pursuant to this Section shall  
4 be eligible to apply for a new license after the expiration of two years from  
5 the date of revocation.

6

7 SECTION 18.

8 (a) Any person whose complaint against a licensed real estate broker or  
9 salesperson is dismissed by the Executive Director without a hearing may  
10 appeal such dismissal to the Commission subject to and in accordance with the  
11 following provisions:

12 (1) The request for appeal must be in writing and received in the  
13 office of the Commission not later than sixty (60) days following the date of  
14 dismissal by the Executive Director.

15 (2) The request for appeal must be accompanied by such filing fee  
16 as the Commission may require pursuant to Section 7 of this act.

17 (3) (A) The appellant must also pay the cost of preparing the  
18 record for the Commission's review, which cost shall be determined by the  
19 Commission. Such costs must be paid by the appellant within thirty (30) days  
20 after notification of the amount, otherwise the appeal will be dismissed.

21 (B) Provided, however, that if the Commission's review  
22 results in a hearing being ordered on the complaint, both the filing fee and  
23 the cost of preparing the record shall be refunded to the appellant.

24 (C) Any person who is indigent and unable to pay either the  
25 filing fee or the cost of the record, or both, may file a pauper's oath in  
26 such form as required by the Commission, and if the Commission determines that  
27 the appellant is indeed indigent, the filing fee or cost of the record, or  
28 both, shall be waived.

29 (b) All appeals duly perfected pursuant to the foregoing provision  
30 shall be presented to and decided by the Commission on the written record.  
31 Such decision may be to affirm the Executive Director's dismissal, to order  
32 additional investigation, or to order a hearing on the complaint.

33

34 SECTION 19.

35 (1) Proceedings under Section 18 above and hearings on denials of

1 licenses shall be conducted pursuant to Ark. Code Ann., Section 25-15-201 et  
2 seq., the Arkansas Administrative Procedure Act.

3 (2) Except in cases where a licensee has obtained a license by false or  
4 fraudulent representation, the Commission shall not investigate the actions  
5 of, or conduct any disciplinary hearing regarding, any real estate broker or  
6 salesperson unless the complaint is filed or the investigation initiated  
7 within three (3) years from the date of the actions complained of or  
8 concerning which an investigation is initiated.

9

10 SECTION 20.

11 (1) Any person acting as a real estate broker or salesperson within  
12 this state who does not hold a valid active Arkansas license or otherwise  
13 violating any of the provisions of this act shall be guilty of a *Class D*  
14 felony and, *upon conviction, punished accordingly.*

15 (2) Any officer or agent of a corporation or member or agent of a firm,  
16 partnership, copartnership, or association who shall personally participate in  
17 or in any way be accessory to any violation of this act by the firm,  
18 partnership, copartnership, association, or corporation shall be subject to  
19 all the penalties prescribed in this section for individuals.

20 (3) Any Commissioner, the Commission's Executive Director or other  
21 designee or any licensee residing in the county where the violation occurs may  
22 by affidavit institute criminal proceedings against any violator of this act  
23 without having to file a bond for costs.

24 (4) The prosecuting attorney for each county shall prosecute any  
25 violation of the provisions of this act which occurs in his or her county.

26

27 SECTION 21.

28 (1) Whenever there is reason to believe that any person, licensed or  
29 unlicensed, has violated any provision of this act, or any order, license,  
30 decision, demand or requirement issued or made pursuant to this act, the  
31 Commission, the Commission's Executive Director or other designee may bring an  
32 action in the chancery court of *any county in which the person resides or does*  
33 *business* to enjoin such person from continuing such violation or engaging  
34 therein or doing any act or acts in furtherance thereof.

35 (2) Whenever there is reason to believe a person is acting as a real

1 estate broker or salesperson in this state without a valid active Arkansas  
2 license, any licensee within the county where the violation occurs may bring  
3 an action in the chancery court to enjoin such person from continuing such  
4 violation or engaging therein or doing any act or acts in furtherance thereof.

5 (3) In any action brought pursuant to this section the chancery court  
6 shall have jurisdiction and authority to enter such preliminary or final  
7 injunction or such other relief as may be appropriate.

8

9 SECTION 22.

10 (1) The provisions of this Section shall apply only to:

11 (a) Licensees who were licensed at the time of the occurrence of  
12 the acts or violations complained of; and

13 (b) Acts or violations which occur after December 31, 1979.

14 (2) Nothing in this Section shall be construed to limit or restrict in  
15 any manner other civil or criminal remedies which may be available to any  
16 person.

17 (3) There is created and established the Real Estate Recovery Fund,  
18 which shall be maintained and administered by the Arkansas Real Estate  
19 Commission as provided in this Section.

20 (4) (a) The Commission shall set the fees at such amount as it deems  
21 necessary to initially establish the fund and to reestablish the fund at the  
22 beginning of each annual renewal period. However, the fee shall not exceed  
23 the limits set forth in Subsection 5 of this Section.

24 (b) The assets of the fund may be invested and reinvested as the  
25 Commission may determine, with the advice of the State Board of Finance.

26 (c) Any amounts in the fund may be used by the Commission for the  
27 following additional purposes:

28 (i) To fund educational seminars and other forms of  
29 educational projects for the use and benefit generally of licensees;

30 (ii) To fund real estate chairs or courses at various state  
31 institutions of higher learning for the purpose of making such courses  
32 available to licensees and the general public;

33 (iii) To fund research projects in the field of real  
34 estate; and

35 (iv) To fund any and all other educational and research

1 projects of a similar nature having to do with the advancement of the real  
2 estate field in Arkansas.

3 (5) (a) In addition to the other fees provided for in this act and  
4 Commission regulations, each licensed real estate broker and salesperson shall  
5 pay to the Commission for the benefit of the fund a fee as the Commission may  
6 require, not to exceed the lesser of:

7 (i) Twenty-five dollars (\$25.00) per annual renewal; or

8 (ii) An amount sufficient to restore the fund balance to  
9 two hundred fifty thousand dollars (\$250,000.00).

10 (b) Likewise, each person who becomes a licensee for the first  
11 time shall at that time pay to the Commission for the benefit of the fund such  
12 fee as the Commission may require, not to exceed twenty-five dollars (\$25.00).

13 (c) No fees collected under the provisions of this Section may be  
14 expended from the fund except for the purposes set forth in this Section.

15 (6) (a) In any disciplinary hearing before the Commission which involves  
16 any licensee who has allegedly violated any provision of this act or  
17 Commission regulations, the Commission shall first determine whether a  
18 violation has occurred.

19 (b) If so, the Commission shall then determine the amount of  
20 damages, if any, suffered by the aggrieved party or parties. However, damages  
21 shall be limited to actual damages in accordance with Subsection 7 of this  
22 Section.

23 (c) The Commission shall then direct the licensee to pay that  
24 amount to the aggrieved party or parties.

25 (d) If that amount has not been paid within thirty (30) days  
26 following entry of the Commission's final order in the matter and the order  
27 has not been appealed to the circuit court, then the Commission shall, upon  
28 request, pay from the fund to the aggrieved party or parties the amount  
29 specified. However, the Commission shall not:

30 (i) Pay in excess of ten thousand dollars (\$10,000) for any  
31 one (1) violation or continuing series of violations, *regardless of the number*  
32 *of licensees who participated in such violation or continuing series of*  
33 *violations;*

34 (ii) Pay an amount in excess of the fund balance.

35 (e) The question of whether or not certain violations constitute

1 a continuing series of violations shall be a matter solely within the  
2 discretion and judgment of the Commission.

3 (f) Nothing within this section shall obligate the fund for any  
4 amount in excess of a total of fifty thousand dollars (\$50,000) with respect  
5 to:

6 (i) The acts of any one (1) licensee, or

7 (ii) *Any group of related claims.*

8 (g) *Whether or not a claim is one of a group of related claims*  
9 shall be a matter solely within the discretion and judgment of the Commission.

10 (h) When unsatisfied or pending claims are such that they exceed  
11 the limits payable under Paragraph (f) of this Subsection, the Commission  
12 shall be the sole determinant of how the available funds shall be allocated  
13 among such claims.

14 (7) (a) The Commission's jurisdiction and authority to award damages to  
15 an aggrieved party pursuant to Subsection 6 of this Section is limited to  
16 actual, compensatory damages. The Commission shall not award punitive or  
17 exemplary damages, nor shall it award interest on damages.

18 (b) Likewise, the appellate jurisdiction of the circuit court is  
19 limited to the awarding of actual, compensatory damages.

20 (c) The circuit court shall have no authority or jurisdiction to  
21 assess punitive or exemplary damages under this Section.

22 (d) The circuit court's jurisdiction over the fund shall be  
23 limited to appeals from the Commission's order.

24 (e) The circuit court shall have no jurisdiction or authority to  
25 order payments from the fund in any amount in excess of either:

26 (i) The amount determined by the Commission; or

27 (ii) The limits set forth in Subsection 6 of this Section.

28 (8) (a) An appeal may be taken to the circuit court from a final order  
29 of the Commission in accordance with the Arkansas Administrative Procedure  
30 Act, Section 25-15-201 et seq.

31 (b) An appeal shall automatically stay that portion of the  
32 Commission order which directs the payment of damages, and neither the  
33 licensee nor the Commission shall be obligated to pay the damages to the  
34 aggrieved party or parties until such time as the appeal is finally decided,  
35 whether in the circuit court or the Arkansas Supreme Court.

1           (9) Upon the payment by the Commission of any amount of money under the  
2 provisions of Subsection 6 of this Section:

3                   (i) The recipients of the payment, to the extent of the payment,  
4 shall assign to the Commission all rights and claims that they may have  
5 against the licensee involved;

6                   (ii) The Commission shall be subrogated to all of the rights of  
7 the recipients of the payment, to the extent of the payment; and

8                   (iii) In addition to any other disciplinary action taken against  
9 the licensee on the merits of the hearing, his or her license shall be  
10 immediately suspended until he or she has completely reimbursed the Commission  
11 for the payment plus interest at a rate to be determined by the Commission,  
12 which rate shall not exceed ten percent (10%) per annum.

13

14           SECTION 23.

15           (1) (a) As a condition precedent to renewal or activation of licenses,  
16 licensees shall meet the following requirements:

17                   (i) Licensees on inactive status are not required to comply  
18 with this subchapter during their inactive status. Prior to activation of a  
19 license on inactive status, the licensee shall satisfactorily complete six (6)  
20 classroom hours, or equivalent continuing education units (CEUs), or  
21 equivalent correspondence work, of continuing education. However, that will  
22 satisfy the requirements only for that particular license year and not for the  
23 following license year.

24                   (ii) Persons licensed as real estate brokers or  
25 salespersons shall successfully complete six (6) classroom hours, or  
26 equivalent continuing education units (CEUs), or equivalent correspondence  
27 work, of continuing education annually. Those persons shall be deemed to have  
28 successfully completed the continuing education requirements for the licensing  
29 year following the year in which first licensed in Arkansas.

30                   (iii) Provided the course or courses consist of no less  
31 than six (6) classroom hours, or equivalent continuing education units  
32 (CEUs), of real estate related subjects and otherwise comply with the minimum  
33 requirements of this Section, and further provided that evidence of such  
34 compliance satisfactory to the Commission is submitted in form, manner, and  
35 content prescribed by the Commission:

1 (A) A nonresident licensee may meet the Arkansas  
2 continuing education requirements by taking courses which meet the continuing  
3 education requirements of his or her resident state for the licensing year in  
4 question; and

5 (B) A licensee may meet the continuing education  
6 requirements of this Section by attending an accredited and recognized  
7 out-of-state college or university during the licensing year in question.

8 (b) The Commission may waive all or part of the requirements of  
9 Subsection (a) of this Section for any licensee who submits satisfactory  
10 evidence of inability to meet the continuing education requirements due to  
11 health reasons or other hardship or extenuating circumstances beyond the  
12 licensee's control.

13 (c) Licenses for persons who apply for renewal of their licenses  
14 and who do not provide to the Commission evidence of meeting the continuing  
15 education requirements, but who have otherwise met all requirements for  
16 license renewal, shall be placed on inactive status until the evidence is  
17 provided to the Commission.

18 (2) (a) The Commission may establish the continuing education curriculum  
19 by identifying subject matter topics. The Commission may identify specific  
20 topics of not more than one hour to be included in continuing education  
21 courses. The Commission shall not require licensees to complete specific  
22 courses within the subject matter topics. Changes in the curriculum shall be  
23 applicable beginning with the license renewal period subsequent to the  
24 curriculum change.

25 (b) The Board shall approve continuing education courses and may  
26 approve only those continuing education courses which meet the criteria  
27 prescribed by the Commission. In establishing such criteria, the Commission  
28 shall give due consideration to the advice and recommendations of the Board.

29 (c) The Board shall determine the classroom hour equivalency of  
30 correspondence courses.

31 (3) The following do not qualify as continuing education:

32 (a) Courses of instruction designed to prepare a student for  
33 passing the real estate broker or salesperson examinations, except as provided  
34 in Subsection (1) (a) of this Section;

35 (b) Offerings in mechanical skills, office and business skills

1 including, but not limited to: typing, speed-reading, memory improvements,  
2 language, report writing, personal motivation, salesmanship, and sales  
3 psychology;

4 (c) Sales promotions or other meetings held in conjunction with  
5 the general business of the licensee;

6 (d) Time devoted to breakfast, luncheons, and dinners; and

7 (e) The same course may not be used to meet the continuing  
8 education requirement twice during the same license year.

9 (4) The following courses and their instructors are not required to  
10 obtain the approval of the Board in order to qualify as continuing education  
11 courses in this Section:

12 (a) Courses in real estate-related subjects offered by the  
13 National Association of Realtors, the National Association of Real Estate  
14 Brokers, or their societies, institutes, or councils;

15 (b) Courses in real estate-related subjects offered by the  
16 Commission.

17 (5) (a) Except as provided in this Section, instructors in continuing  
18 education courses shall file credentials with the Board showing the necessary  
19 specialized preparation, training, and experience to ensure competent and  
20 qualified instruction.

21 (b) Instructors shall meet at least one (1) of the following  
22 requirements:

23 (i) A bachelor's degree in the field in which the  
24 instructor is to teach; or

25 (ii) A valid teaching credential or certificate from  
26 Arkansas or another state authorizing the holder to teach in the field of  
27 instruction being offered; or

28 (iii) Five (5) years of full-time experience in a  
29 profession, trade, or technical occupation in the field of instruction being  
30 offered.

31 (6) (a) Credit shall be earned on the basis of attendance.

32 (b) (i) A certificate of attendance, which states the name  
33 of the student, the name of the school or sponsor of the course, the date the  
34 course was completed, and the number of classroom hours of instruction covered  
35 by the individual course, and such other information as the Commission may

1 require shall be presented to each attendee upon completion of the course.  
2 Either a copy of the certificate or other proof of satisfactory completion of  
3 the course acceptable to the Commission shall be furnished to the Commission  
4 by the licensee. It is the licensee's responsibility to establish his or her  
5 successful completion of a continuing education course.

6 (ii) No certificate of attendance shall be issued to a  
7 licensee who is absent for more than ten percent (10%) of the classroom hours.

8 (7) The Commission or its designee is authorized to attend and monitor  
9 any courses of instruction offered or to be offered as meeting the  
10 requirements of this act.

11

12 SECTION 24.

13 (1) (a) The Commission is hereby authorized and empowered, subject to  
14 the following restrictions and limitations, to establish a program authorizing  
15 and permitting the collection of interest on real estate brokers' trust  
16 accounts and the disbursement of such interest by the depository institutions  
17 involved to an Arkansas nonprofit corporation for use for such tax exempt  
18 purposes as hereinafter set forth.

19 (b) Participation in the program shall be completely voluntary  
20 with each broker rather than mandatory.

21 (2) (a) All real estate brokers participating in this program shall  
22 post a notice at least four inches by seven inches (4" x 7") stating that they  
23 participate in the interest on real estate brokers' trust accounts program.

24 (b) Said notice shall be displayed prominently and shall contain  
25 information concerning the purposes for which the interest accumulating on the  
26 account shall be used, and shall state: If funds belonging to you are  
27 deposited in this firm's trust account, any interest earned therefrom will be  
28 forwarded by the depository bank to a nonprofit organization which will  
29 dispense the funds to provide for economic development, research, education,  
30 and such other public service purposes as may be determined by the recipient  
31 corporation selected by the Commission.

32 (3) (a) The recipient of the funds generated by such program shall be  
33 such Arkansas nonprofit corporation as the Commission shall designate. The  
34 corporation shall be tax exempt as defined by Section 501(c)(3) of the  
35 Internal Revenue Code. Such corporation shall be governed by a board of

1 directors consisting of not fewer than five (5) nor more than fifteen (15)  
2 members. At least sixty percent (60%) of the total number of directors shall  
3 be appointed by the Commission and the remainder by the Arkansas REALTORS  
4 Association.

5 (b) The funds generated by the program shall be used for economic  
6 development, research, education, and such other public service purposes as  
7 may be determined by the recipient corporation specified in this section.

8

9 SECTION 25.

10 This act shall be known as the Real Estate License Law.

11

12 SECTION 26.

13 This act shall become effective on January 1, 1994.

14

15 SECTION 27. If any provision of this act or the application thereof to  
16 any person or circumstance is held invalid, such invalidity shall not affect  
17 other provisions or applications of the act which can be given effect without  
18 the invalid provision or application, and to this end the provisions of this  
19 act are declared to be severable.

20

21 SECTION 28. All provisions of this act of a general and permanent  
22 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
23 Code Revision Commission shall incorporate the same in the Code.

24

25 SECTION 29. (a) Effective January 1, 1994, Chapter 35 of Title 17 of  
26 the Arkansas Code is repealed.

27 (b) All laws and parts of laws in conflict herewith are repealed  
28 effective January 1, 1994.

29

*/s/Rep. Dietz*

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APPROVED: 3/24/93

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